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UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

JEFF C. TINGEY and SAMANTHA MOORE,
individually and as Heirs of LEAH JAN
TINGEY and NYALS BODINE and JAY
BODINE as an Heir of NYALS BODINE,

Plaintiffs,

vs.

NISSAN NORTH AMERICA INC., and
NISSAN MOTOR CO. LTD.,

Defendants.

NOTICE OF REMOVAL

Civil No. 1:18-cv-00093-BCW

Magistrate Judge Brooke C. Wells

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendant Nissan North America Inc. (“NNA”) hereby removes this action from the First Judicial District Court, Cache County, State of Utah, where it is now pending, to the United States District Court for the District of Utah. This Court has jurisdiction over this action under 28 U.S.C. § 1332. In support of removal, NNA states as follows:

1. Jeff C. Tingey and Samantha Moore, Individually and as Heirs of Leah Jan Tingey and Nyals Bodine and Jay Bodine as an Heir of Nyals Bodine (“Plaintiffs”) filed a Complaint in the First Judicial District of Utah, Cache County, Utah, on March 20, 2018; an Amended Complaint was filed on July 18, 2018. The lawsuit is captioned *Jeff C. Tingey and Samantha Moore, Individually and as Heirs of Leah Jan Tingey and Nyals Bodine and Jay Bodine as an Heir of Nyals Bodine v. Nissan North America Inc. and Nissan Motor Co. LTD.* Civil No. 180100093 (“State Court Action”).¹

2. Plaintiffs served the Amended Complaint on NNA on July 19, 2018. A copy of the Summons and Amended Complaint are attached hereto as Exhibit 1.

3. Removal is timely pursuant to 28 U.S.C. § 1446 because this Notice of Removal is filed within 30 days after NNA received a copy of the Complaint, and within one year of the commencement of the action.

4. Pursuant to 28 U.S.C. § 1441, this Court is the appropriate forum in which to file this Notice of Removal because the United States District Court for the District of Utah is the federal judicial district embracing Cache County, Utah, the county in which Petitioner filed the State Court Action.

5. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332 because it is a civil action between citizens of different states, and the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs, as set forth below.

6. Plaintiffs Jeff Tingey and Jay Bodine are citizens of the State of Utah. *See* Am. Compl. ¶¶ 1, 3.

¹ The July 18, 2018, filing date relates to Plaintiffs’ Amended Complaint.

7. Plaintiff Samantha Moore is a citizen of the State of Ohio. *See* Am. Compl. ¶ 2.

8. NNA is incorporated in the State of California and has its principal place of business in the State of Tennessee.

9. Nissan Motor Co., Ltd., is a Japanese corporation. It is not incorporated in nor does it have its principal place of business in the states of Utah or Ohio.²

10. Thus, pursuant to 28 U.S.C. § 1332, there is complete diversity of citizenship herein between Plaintiffs and Defendants, inasmuch as this is an action between citizens of different states.

11. Plaintiffs presently allege \$305,000 dollars in damages with further damages to be proven at trial. *See* Am. Compl. at 7.

12. Thus, the matter in controversy exceeds \$75,000, exclusive of interest and costs.

13. This action may therefore be removed to this Court pursuant to 28 U.S.C. § 1441.

14. An appendix containing copies of all process and pleadings in the State Court Action is attached hereto as Exhibit 2.

15. NNA has served a copy of this Notice on Plaintiff and filed a Notice of Filing Notice of Removal in the State Court Action. *See* Exhibit 3.

² Nissan Motor Co. Ltd. has not yet been served. Accordingly, NNA may properly move forward with its removal action without consideration of Nissan Motor Co. Ltd. *See, e.g., Klima Well Serv., Inc. v. Hurley*, No. 14-1250-SAC, 2014 WL 6819463, at *2 (D. Kan. Dec. 2, 2014) (citing *Sheldon v. Khanal*, 502 Fed. Appx. 765 (10th Cir. 2012) (unpublished) (holding that “a defendant's consent to removal was not necessary where he had not been served at the time another defendant filed its notice of removal”).

WHEREFORE, NNA respectfully requests that the State Court Action be removed to and proceed hereafter in this Court, and no further proceedings be had in the First Judicial District Court, Cache County, State of Utah.

DATED this 31st day of July, 2018.

SNELL & WILMER L.L.P.

/s/ Tracy H. Fowler
Tracy H. Fowler
Gary K. Wilkinson
*Attorneys for Defendant Nissan North
America Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of July, 2018, a true and correct copy of the foregoing NOTICE OF REMOVAL was electronically filed with the Clerk of Court and served on the following using the Court's CM/ECF electronic filing system:

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/s/ Tracy H. Fowler